

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA  
SAN JOSE DIVISION

ALLEN RAY ADAMS II,

NO. C 03-04994 JW

Petitioner,

**CERTIFICATE OF  
APPEALABILITY**

v.

ROY CASTRO,

Respondent.

Petitioner Allen Ray Adams II ("Petitioner") filed a petition for a writ of habeas corpus in this Court on November 10, 2003 contesting a Humboldt County jury verdict, which resulted in a conviction of (1) one count of first degree murder with a deadly weapon; (2) assault with a deadly weapon, with the intent to commit great bodily harm; and (3) simple assault. Petitioner was acquitted of attempted first degree murder. The First Appellate District of the California Court of Appeal affirmed the conviction and the California Supreme Court denied review.

Thereafter, Petitioner initiated the instant action pursuant to 28 U.S.C. § 2254. Petitioner raised numerous constitutional issues, *inter alia*, his right to due process and equal protection, his right to effective assistance of counsel and effective expert witness, and his right to present a defense and to have trial by jury. (See Pet. for Writ of Habeas Corpus.) After examining the record and the papers submitted by the parties in support of their respective positions, the Court denied the petition by order dated November 30, 2005. On December 29, 2005, Petitioner filed a notice of appeal.

Pursuant to 28 U.S.C. § 2253, an appeal may not be taken unless a judge issues a certificate of appealability. A petitioner is entitled to a certificate of appealability whenever there is “a substantial showing of the denial of a constitutional right.” 28 U.S.C. §2253(c)(2). This is satisfied by a showing “that jurists of reason could disagree with the district court’s resolution of his constitutional claims or that jurists could conclude the issues presented are adequate to deserve encouragement to proceed further.” Miller-El v. Cockrell, 537 U.S. 322, 327 (2003).

Applying the standard set forth above, the Court certifies the appealability of the following claims and issues because they “deserve encouragement to proceed further”: claim two– failure to introduce exculpatory evidence of intoxication; claim three–ineffective assistance in calling an expert witness who had been previously arrested for cocaine possession; and claim five – numerous instances of counsel’s ineffectiveness. The request for a certificate of appealability is denied in all other respects.

Dated: January 3, 2006

03cv4994coa

/s/James Ware

JAMES WARE

United States District Judge

1 **THIS IS TO CERTIFY THAT COPIES OF THIS ORDER HAVE BEEN DELIVERED TO:**

2 John R. Grele [jgrele@earthlink.net](mailto:jgrele@earthlink.net)  
3 Morris Beatus [morris.beatus@doj.ca.gov](mailto:morris.beatus@doj.ca.gov)  
4 Peggy S. Ruffra [peggy.ruffra@doj.ca.gov](mailto:peggy.ruffra@doj.ca.gov)

5 **Dated: January 4, 2006**

**Richard W. Wiekling, Clerk**

6 **By: /s/JW Chambers**

7 **Melissa Peralta**  
8 **Courtroom Deputy**